

levels programmed as acceptable for milking system pulsators, said processor generating at least one control signal when the monitored pulsator pulsating vacuum level is at a vacuum level outside of the predetermined vacuum range and at least one information signal generated by the processor from the pulsator malfunction criteria reference table identifying the pulsator malfunction represented by the at least one control signal.

REMARKS

**Claims in the Application**

Claims 1 through 51 are pending in this United States Patent Application. The claim(s) are subject to a restriction requirement under 35 U.S.C. 121 as set forth below.

**Election/Restriction**

The Examiner imposed a restriction requirement under 35 U.S.C. 121 and determined that the following distinct inventions were present in this United States Patent Application:

<u>Group</u>	<u>Claims</u>	<u>Classification</u>
I	Claims 26-37  <b>Applicants have responded on the basis that the claims in Group I are claims 27-37 in that claim 26 is part of Group III.</b>	Drawn to a pulsator controller, classified in Class 119, subclass 14.41
II	Claims 38-44	Drawn to a method of milking, classified in Class 119, subclass 14.02
III	Claims 1-26 and 45-50	Drawn to a milking system, classified in Class 119, subclass 14.29
IV	Claim 51	Drawn to a monitoring and control system, classified in Class 119, subclass 14.18

The undersigned hereby elects the Group III, Claims 1-26 and 45-50 for prosecution in this Application. This election is made without traverse.

The Examiner made the following statement at Paragraph 2. of the Office Action dated April 4, 2005, to wit:

Inventions III and IV, respectively and I are related as a combination and subcombination. Inventions in this

relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require the use of an operating control signal to adjust parameters. The subcombination has separate utility such as a pulsator control for testing individual quarters for mastitis.

With respect to the last sentence which states as follows:

The subcombination has separate utility such as a pulsator control for testing individual quarters for mastitis.

Applicants have the following comments. The subcombination has separate utility such as a pulsator control for insuring correct and proper operation of the pulsators as improper operation of the pulsators e.g. variable vacuums being applied to the cow teats,

could result in causing mastitis in a cow as opposed to "testing individual quarters for mastitis".

The Examiner made the following statement at Paragraph 2. of the Office Action dated April 4, 2005, to wit:

Inventions I, III and IV, respectively and II are related as a product and process of use. The invention can be shown as distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 896.05(h)). In the instant case the product as claimed can be used to monitor normal operation of the pulsator thereby generating a control signal when the vacuum level is within a predetermined vacuum range range.

Applicants agree with the examiner's statement.

The Examiner made the following statement at Paragraph 3. of the Office Action dated April 4, 2005, to wit:

Inventions IV and III are related as a combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require a source of milking vacuum applied to each of the milking apparatus. The subcombination has separate utility such as a pulsator control for testing individual quarters for mastitis.

With respect to the last sentence which states as follows:

The subcombination has separate utility such as a pulsator control for testing individual quarters for mastitis.

Applicants have the following comments. The subcombination has separate utility such as a pulsator control for insuring

correct and proper operation of the pulsators as improper operation of the pulsators e.g., variable vacuums being applied to the cow teats, could result in causing mastitis in a cow as opposed to "testing individual quarters for mastitis".

The examiner stated further as follows:

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classifications, restriction is required for examination purposes as indicated is proper.

As noted above, the undersigned hereby confirms the election of Group III, Claims 1-26 and 45-50 for prosecution in this Application. This election is made without traverse.

The examiner then stated as follows:

This application contains claims directed to the following patentabl distinct species of the clqimed invention: If Group I or III is chosen, Applicant is required is required under 35 U.S.C. 121 to elect a single disclosed species of visual display (i.e, display light, written message on an annunicator or written message on a video

monitor).

In order to be responsive to the requirement under 35 U.S.C. 121 to elect a single disclosed species of visual display, **Applicants elect a written message on a video monitor.**

The examiner then stated as follows:

Upon election of a single species of visual display, the Applicant is further required under 35 U.S.C. 121 to elect a single disclosed species of reference table data (i.e. low vacuum, high vacuum, defective coil in pulsator, pulsator component malfunction, vacuum line occlusion or a single combination of any of the previous parameters).

Applicants are confused by this requirement as Applicants do not understand the meaning of "or a single combination of any of the previous parameters". It would seem to Applicants that a single combination would include, for example, a combination of low vacuum and defective coil in pulsator or a combination of a low vacuum and a pulsator component malfunction.

It appears to the Applicants that a look-up reference table data having a number of species included in the table data wherein one or more of the species could be identified. e.g. low

vacuum, or a combination of two species, e.g. a combination of low vacuum and defective coil in pulsator or a combination of a low vacuum and a pulsator component malfunction, that such a recitation would not be subject to requiring Applicants to then elect a species of the disclosed species of reference table data or look-ups.

For these reasons, the Examiner is respectfully requested to reconsider this additional species designation as being unnecessary for purposes of prosecution.

However, in order to be responsive to this requirement, Applicant elects a single disclosed species of reference table data a pulsator component malfunction, as a single species, or a combination of two species, e.g. a combination of low vacuum and defective coil in pulsator, as a single combination of any of the previous parameters. If an election is required between these designations, then the Applicants elect a single disclosed species of reference table data as a pulsator component malfunction, as a single species.

The Examiner then goes on to state as follows:

8. The Applicant is required under under 35 U.S.C. 121 to elect a single disclosed species as detailed in items 6 and 7, above for prosecution on the merits to which the



claims shall be restricted if no generic claim is finally held allowable. Currently, no claims are generic.

Applicants respectfully disagree with the Examiners statement " Currently, no claims are generic." for several important reasons.

Claim 3, which is dependent on dependent claim 2 which in turn is dependent on independent claim 1, includes a reference table for storing pulsator malfunctions and for generating a visual display. As such, Claim 3 qualifies as a generic claim incorporating the two separate elected species as discussed above.

The Examiner then goes onto state:

Applicant is advised that a reply to this requirement must include an identification of the species that is elected constant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

In order to be responsive to this additional requirement,

the following claims read on the elected species:

**Visual display/written Claims 3, 6**

**message on a video**

**monitor**

**Reference table/pulsator Claims 1, 2, 11,**

**component malfunction 26**

The Examiner further stated, to wit:

Upon the allowance of a generic claim, applicant will be entitled to consideration of additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. 1.141. If the claims are added after the election, applicant must indicate which are readable on the elected species. MPEP § 809.02(a).

Applicants desire to retain the rights under 37 C.F.R. 1.141 such that upon the allowance of a generic claim, applicants will be entitled to consideration of additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim.

**Withdrawn Invention**

Group I claims, claims 27-37 [as opposed to Claims 26-37 as discussed above]; Group II claims 38-44 and Group IV claim 51 are withdrawn from further consideration by the Examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Applicants do not desire to cancel the claims drawn to the non-elected invention until an allowable claim or claims have been obtained in this Application.

**Amendment to the Drawings and Specification**

In connection with the prosecution of United States Patent Application Serial No, 10/359,824 filed February 7, 2003, which application covers a related invention having a similar specification and figures of the drawing, the Examiner object to certain inconsistencies in the specification relative to the drawing and required corrections to the specification to overcome objections of the Examiner

Applicants have amended this Application in the same manner as the drawings and specification were amended to overcome the objections.

No new matter has been added to either the drawing or the specification in making these corrections and changes.

Enclosed herewith are substituted "replacement sheets" for Sheets 1 through 3 and 6 of the 14 Sheets of Drawing in A-4 size

having the above corrections. No corrections are required for Sheets 4, 5 and 7 through 14 of the Drawing.

No new matter has been added in making these corrections.

The "replacement sheets" comprising formal Sheets of Drawing for Sheets 1 through 3 and 6 are deemed as filed as of the filing date of this AMENDMENT.

#### **Amendment to Claims**

Applicants have amended independent claims 1, 26 and 45 to provide that the a processor is

"operatively connected to a memory or to a remote computer having a memory for storing pulsator malfunction criteria as a reference table and stored reference signals representing a predetermined vacuum range of pulsating vacuum levels programmed as acceptable for milking system pulsators".

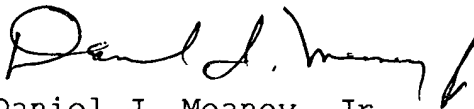
An antecedent basis therefore exists at lines 5 to 11 on Page 63 of the specification.

Claim 7 has been amended to recite that the processor has a memory for storing pulsator malfunction criteria as a reference table.

SUMMARY

Applicants have elected Group III, claims 1-26 and 45 -50 for continued prosecution in this Application. Applicants have complied with the designation of species requirements with the elected invention Group III.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel J. Meaney, Jr.", with a stylized flourish at the end.

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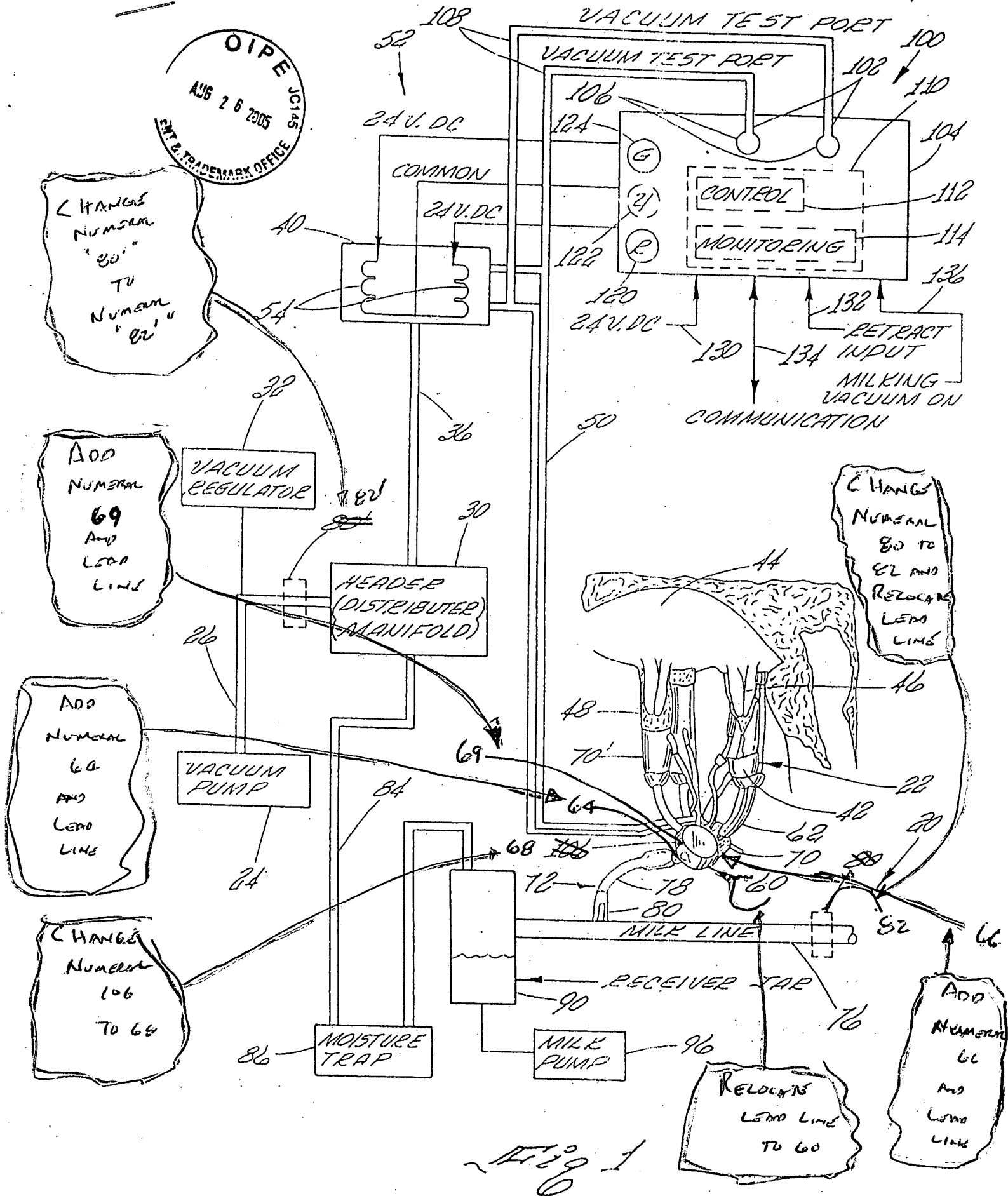
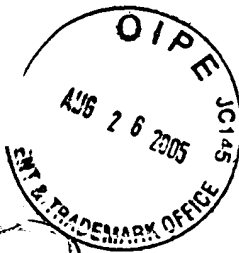


Fig 1

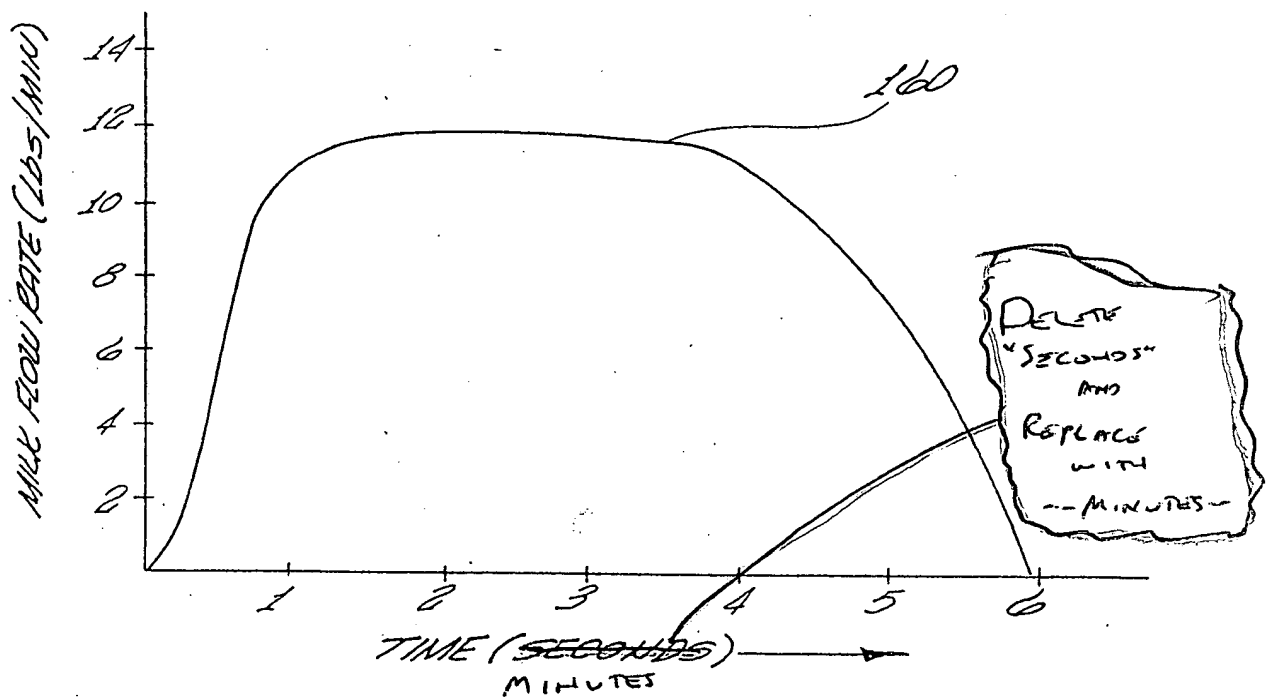
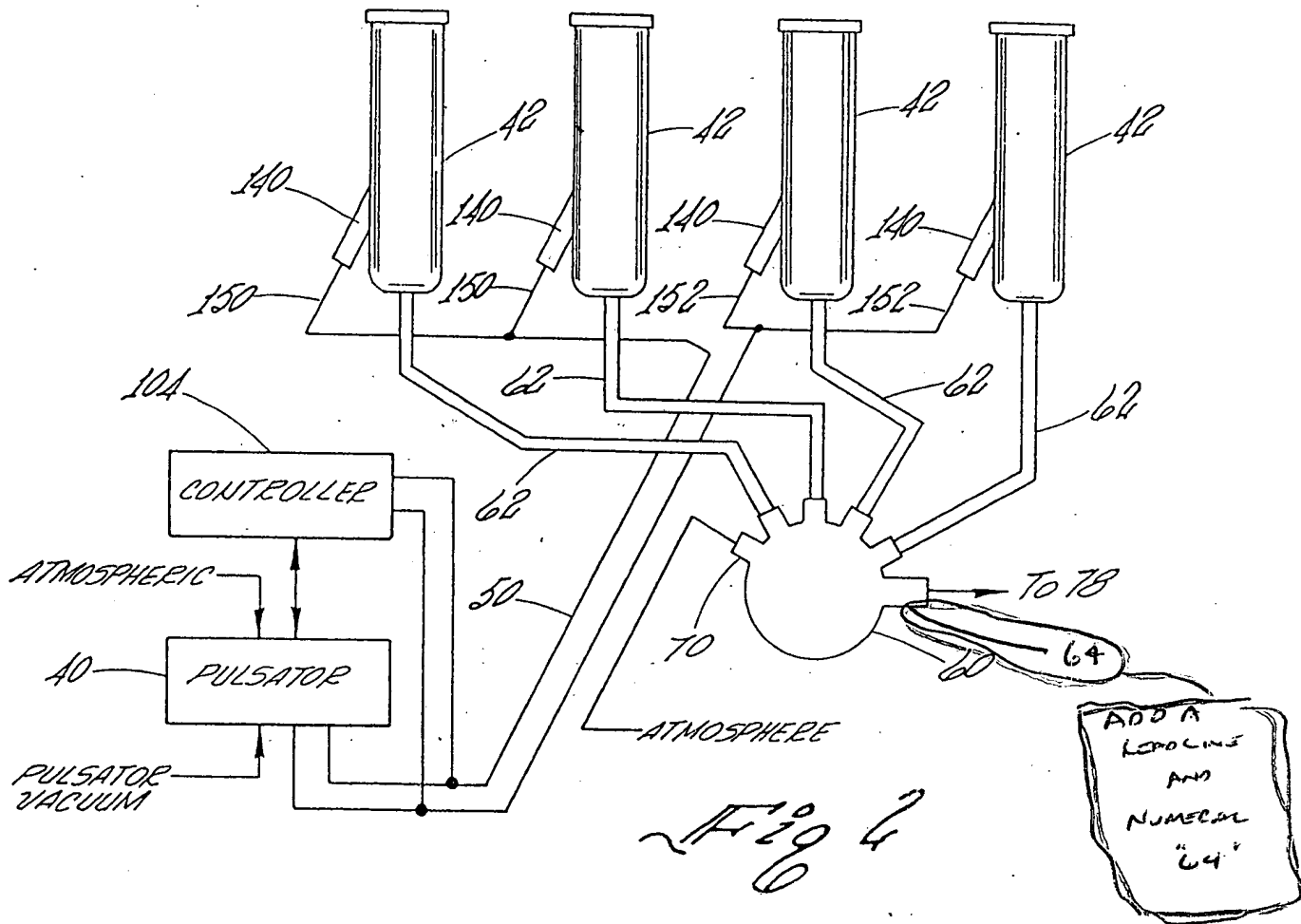


Fig 3

DELETE "SECONDS" AND  
REPLACE WITH "MINUTES"

